

IT 05-4

Tax Type: Income Tax

Issue: Federal Change (Individual)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

***JOHN DOE & JANE
DOE,***

Taxpayers

No. 04 IT 0000
SSN: 000-00-0000
TYE 12/31/1999

Mimi Brin
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

Appearances: Sean Cullinan, Special Assistant Attorney General, on behalf of the Illinois Department of Revenue

Synopsis:

This matter comes on for hearing pursuant to the protest and request for hearing filed by *John Doe* and *Jane Doe* (“Taxpayers”) in response to the Notice of Deficiency (“NOD”) issued to them by the Illinois Department of Revenue (“Department”) proposing additional income tax due for the tax year 1999 (“tax year”). *John Doe* (“Doe”) appeared at the hearing on this matter on behalf of the taxpayers. Following the submission of all evidence and a review of the record, it is recommended that the NOD be revised and finalized as so revised, and in support thereof, I make the following findings of fact and conclusions of law:

Findings of Fact:

1. The Department's *prima facie* case, inclusive of all jurisdictional elements, was established by the admission into evidence of the Notice of Deficiency, dated June 18, 2004, proposing a deficiency for Illinois income tax for the tax year 1999; Department Ex. No. 1
2. Pursuant to information received from the Internal Revenue Service, the Department increased taxpayers' adjusted gross income for the tax year from \$92,041 as filed by the taxpayers, to \$103,071; *Id.*
3. For federal income tax purposes, taxpayers' adjusted gross income for the tax year was \$93,288.00. Taxpayers Ex. No. 1 (IRS report dated 3/11/05)

Conclusions of Law:

The Illinois Income Tax Act, 35 ILCS 5/101 *et seq.*, provides that a taxpayer must report to the Department any change made to its federal income tax return within 120 days after such change has been agreed to or finally determined. *Id.* at 5/506 (b) This is the basis of the Department's notice of deficiency at issue herein. The Department's position, as evidenced from the NOD, is that there was a change to taxpayers' adjusted gross income by the IRS, and, therefore, for Illinois income tax purposes, taxpayers' return as filed with the State, incorrectly reported their adjusted gross income to the extent that there was now a deficiency in reporting. The taxpayers' position is that they did not have the amount of income claimed by the Department.

The Notice of Deficiency issued by the Department is *prima facie* correct and is *prima facie* evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904 (a); Balla v. Department of Revenue, 96 Ill. App.3d 293 (1st Dist. 1981) The

burden is then on the taxpayer to rebut the correctness of the notice. Id. In this matter, taxpayers presented a transcript of an account, from the Department of the Treasury, Internal Revenue Service, dated 3/11/05, concerning the tax year at issue and for the social security number pertinent herein. It shows, *inter alia*, an adjusted gross income of \$93,288. Thus, the adjustment made by the Department as shown in the NOD does not reflect the adjusted gross income for taxpayers. The taxpayers, therefore, have rebutted the *prima facie* correctness of the NOD with competent and sufficient evidence of the correct adjusted gross income necessary for Illinois income tax purposes. However, the evidence also reflects that taxpayers' adjusted gross income was more than they had reported to Illinois.

WHEREFORE, for the reasons stated above, it is recommended that the NOD be revised to reflect the adjusted gross income as found in the Internal Revenue Service file for taxpayers for the 1999 tax year, and as so revised, shall be finalized, with statutory interest and/or penalties applied.

Date: 4/26/2005

Mimi Brin
Administrative Law Judge